

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MELVIN KETCHUM, §
TDCJ-CID NO. 1323518, §
v. § C.A. NO. C-08-193
§
NATHANIEL QUARTERMAN. §

ORDER DENYING MOTION FOR AN EVIDENTIARY HEARING

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Eastham Unit in Lovelady, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 53).

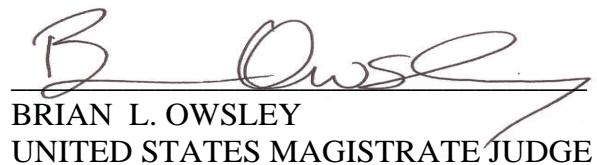
Rule 8(a) of the Rules Governing Section 2254 Cases states that “[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.” Rule 8(c) further requires that “[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare.” The Fifth Circuit has explained that “[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute.” Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction for sexual assault of a child by the 347th Judicial District Court in Nueces County, Texas. (D.E. 1, at 2). On October 7, 2008, his petition was dismissed and final judgment was entered. (D.E. 35, 36). On October 16, 2008, he filed a notice of appeal. (D.E. 37). Petitioner's habeas action has been dismissed and he has filed a notice of

appeal. At this time, any further proceedings should be before the United States Court of Appeal for the Fifth Circuit.

Accordingly, it is ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 53), be DENIED.

ORDERED this 22nd day of January 2009.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE